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RECORDATION NO. 20448-A, B FILED 1425  
JAN 31 1997 - 11 20 AM

January 31, 1997

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a), are two (2) copies of a Master Rail Lease Agreement, dated as of December 27, 1996, and an Trust Indenture and Security Agreement, dated as of January 21, 1997, a both secondary documents as defined in the Board's Rules for the Recordation of Documents.

The enclosed documents relate to the Memorandum of Lease which was previously filed with the Board under Recordation Number 20448.

The names and addresses of the parties to the enclosed documents are:

Master Rail Lease Agreement

Lessor: Pitney Bowes Credit Corporation  
201 Merritt Seven  
Norwalk, Connecticut 06856

Lessee: Illinois Central Railroad Company  
455 North Cityfront Plaza Drive  
Chicago, Illinois 60611

Mr. Vernon A. Williams  
January 31, 1997  
Page 2

Trust Indenture and Security Agreement

Borrower	Pitney Bowes Credit Corporation 201 Merritt Seven Norwalk, Connecticut 06856
Secured Party	First Security Bank, National Association 79 South Main Street Salt Lake City, Utah 84111

A description of the railroad equipment covered by the enclosed document is:  
  
six hundred (600) covered hopper railcars IC 799200 through IC 799799

Also enclosed is a check in the amount of \$44.00 payable to the order of the  
Surface Transportation Board covering the required recordation fees

Kindly return stamped copies of the enclosed documents to the undersigned.

Very truly yours,



Robert W. Alvord

RWA/bg  
Enclosures

RECORDATION NO. 20448-B  
JAN 31 1997 - 11:20 AM  
FILED 1/25

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TRUST INDENTURE AND SECURITY AGREEMENT

Dated as of January 21, 1997

Between

PITNEY BOWES CREDIT CORPORATION,

as the Borrower,

And

FIRST SECURITY BANK, NATIONAL ASSOCIATION,

as the Indenture Trustee

Illinois Central Railcars

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ATTACHMENTS TO TRUST INDENTURE AND SECURITY AGREEMENT:

Exhibit A	— [Reserved]
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## TRUST INDENTURE AND SECURITY AGREEMENT

THIS TRUST INDENTURE AND SECURITY AGREEMENT dated as of January 21, 1997 (this "Indenture"), between PITNEY BOWES CREDIT CORPORATION (herein called the "Borrower"), and FIRST SECURITY BANK, NATIONAL ASSOCIATION, a national banking association, as the Indenture Trustee hereunder and any successor appointed in accordance with the terms hereof (herein called the "Indenture Trustee");

### W I T N E S S E T H :

WHEREAS, the Borrower and the Indenture Trustee desire by this Indenture, among other things, (i) to provide for the issuance by the Borrower of its limited recourse 7.42% Secured Notes, due December 30, 2011 (the "Notes") in an aggregate principal amount not to exceed \$33,189,288.00, expressed to bear interest and to be payable in principal amounts in accordance with Annex A to the Note, substantially in the form of Exhibit B hereto, and (ii) to provide for the assignment, mortgage and pledge by the Borrower to the Indenture Trustee, as part of the Indenture Estate hereunder, among other things, of, and the grant of a security interest in, certain of the Borrower's right, title and interest in and to the Equipment, the Lease, the other Transaction Documents, and certain payments and other amounts received hereunder or thereunder, in accordance with the terms hereof, in trust, as security for, among other things, the Borrower's obligations for the equal and ratable benefit of the holders of the Notes; and

WHEREAS, all things necessary to make this Indenture the legal, valid and binding obligation of the Borrower and the Indenture Trustee, for the uses and purposes herein set forth, in accordance with its terms, have been done and performed and have happened.

### GRANTING CLAUSE

NOW, THEREFORE, THIS TRUST INDENTURE AND SECURITY AGREEMENT WITNESSETH, that, to secure the prompt payment of the principal of and interest and premium, if any, on, and all other amounts due with respect to, the Notes from time to time outstanding hereunder and the performance and observance by the Borrower of all the agreements, covenants and provisions herein and in the Notes and the other Refunding Documents, all for the benefit of the holders of the Notes, and for the uses and purposes and subject to the terms and provisions hereof, and in consideration of the premises and of the covenants herein contained, and of the acceptance of the

Notes by the Loan Participant, the Borrower does hereby sell, grant, assign, transfer, convey, mortgage, pledge, and confirm unto the Indenture Trustee, its successors and assigns, for the security and benefit of the holders of the Notes from time to time, a security interest in and mortgage lien on all right, title and interest of the Borrower in and to the following described property, rights, interests and privileges (which collectively, including all property hereafter required to be subjected to the lien of this Indenture by any instrument supplemental hereto, but excluding Excepted Property and subject to Section 4.4, being herein called the "Indenture Estate"), to wit:

(1) the Lease (including all Lease Supplements), including, without limitation, all amounts of Basic Rent, Supplemental Rent, insurance proceeds, indemnities and other payments of any kind for or with respect to the Equipment, and all rights, powers, privileges, licenses, options and other benefits of the Borrower under the Lease (including all Lease Supplements), including, without limitation, the right to make all waivers and agreements, to give and receive all notices and other instruments or communications, to take such action upon the occurrence of a default thereunder, including the commencement, conduct and consummation of legal, administrative or other proceedings, as shall be permitted thereby or by law, and to do any and all other things which the Borrower is or may be entitled to do thereunder;

(2) the Bill of Sale, the Acknowledgment of Lease Assignment, the Assignment of Purchase Orders and all other Transaction Documents including, without limitation, all payments of any kind thereunder and all rights, powers, privileges, licenses, options and other benefits of PBCC under any Transaction Document including, without limitation, the right to make all waivers and agreements, to give and receive all notices and other instruments or communications, to take such action upon the occurrence of a default thereunder, including the commencement, conduct and consummation of legal, administrative or other proceedings, as shall be permitted thereby or by law, and to do any and all other things which PBCC is or may be entitled to do thereunder;

(3) the Equipment, as more particularly described in Schedule 1 to the Indenture and the Lease Schedule executed and delivered with respect to the Equipment, as provided in this Indenture and the Lease;

(4) all insurance and requisition proceeds with respect to the Equipment;

(5) each sublease of the Equipment or any part thereof, including, without limitation, all right, title and interest of the Borrower thereunder and therein;

(6) all other moneys and securities now or hereafter paid or deposited or required to be paid or deposited with the Indenture Trustee pursuant to any term of this Indenture, the Lease or any other Transaction Document or required to be held by the Indenture Trustee hereunder or thereunder; and

(7) all proceeds of the foregoing.

Notwithstanding the foregoing provisions, there shall be excluded from the foregoing sale, grant, assignment, transfer, conveyance, mortgage, pledge or security interest granted by this Indenture and from the Indenture Estate all Excepted Property, which shall be retained by the Borrower, and such sale, grant, assignment, transfer, conveyance, mortgage, pledge and security interest shall be subject to the terms and conditions of this Indenture, including, without limitation, Section 4.4.

TO HAVE AND TO HOLD all and singular the aforesaid property unto the Indenture Trustee, its successors and assigns, in trust for the benefit and security of the holders of the Notes from time to time, without preference, priority or distinction of any one Note over any other by reason of priority of time of issue, sale, negotiation, date of maturity thereof or otherwise for any cause whatsoever, and for the uses and purposes, and subject to the terms and provisions, set forth in this Indenture.

It is expressly agreed that anything herein contained to the contrary notwithstanding, the Borrower shall remain liable under each of the Transaction Documents to which it is a party (to the extent the Borrower is liable thereunder) to perform all of the obligations, if any, assumed by it thereunder, all in accordance with and pursuant to the terms and provisions thereof, and the Indenture Trustee and the holders of the Notes shall have no obligation or liability under any of the Transaction Documents to which the Borrower is a party by reason of or arising out of this assignment, nor shall the Indenture Trustee or the holders of the Notes be required or obligated in any manner to perform or fulfill any obligations of the Borrower under or pursuant to any of the Transaction Documents to which the Borrower is a party or, except as herein expressly provided, to make any payment, or to make any inquiry as to the nature or sufficiency of any payment received by it, or present or file any claim, or take any action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

The Borrower does hereby constitute the Indenture Trustee the true and lawful attorney of the Borrower, irrevocably, with full power (in the name of the Borrower or otherwise) to, if an Indenture Default or Indenture Event of Default shall have occurred and be continuing, ask, require, demand, receive, compound and give acquittance for any and all moneys and claims for moneys due and to become due to the Borrower (other than Excepted Property), under or arising out of the Lease or any other Transaction Document, or to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which the Indenture Trustee may deem to be necessary or advisable in the premises. For so long as the Lien of this Indenture has not been discharged in accordance with the terms hereof, the Borrower under the Lease has directed (i) the Lessee to make all payments of Basic Rent and Supplemental Rent (other than Excepted Property) payable to the Borrower by the Lessee and all other amounts which are required to be paid to or deposited with the Borrower pursuant to the Lease, and (ii) the manufacturer to make all payments due to the Lessee or PBCC under the Assignment of Purchase Orders directly to the Indenture Trustee at such address as the Indenture Trustee shall specify, for application as provided in this Indenture. For so long as the Lien of this Indenture has not been discharged in accordance with the terms hereof, the Borrower agrees that promptly on receipt thereof, it will transfer to the Indenture Trustee any and all moneys from time to time received by it constituting part of the Indenture Estate, for distribution by the Indenture Trustee pursuant to this Indenture, except that the Borrower shall accept any Excepted Property.

The Borrower agrees that at any time and from time to time, upon the written request of the Indenture Trustee and at PBCC's expense and at no expense to the Indenture Trustee, the Borrower will promptly and duly execute and deliver or cause to be executed and delivered any and all such further instruments and documents as the Indenture Trustee may deem desirable in obtaining the full benefits of this assignment and of the rights and powers herein granted.

Any and all property described in or referred to in the granting clauses hereof which is hereafter acquired (other than Excepted Property) shall ipso facto, and without any further conveyance, assignment or act on the part of the Borrower or the Indenture Trustee, become and be subject to the security interest herein granted as fully and completely as though specifically described herein, but nothing herein contained shall be deemed to modify or change the obligation of the Borrower under the preceding paragraph.

The Borrower does hereby warrant and represent that it has not assigned or pledged, and hereby covenants that it will not, except in accordance with the terms of the Transaction Documents, assign or pledge, so long as the assignment hereunder

shall remain in effect, any of its right, title or interest hereby assigned, to anyone other than the Indenture Trustee, and that it will not (other than in respect of Excepted Property and subject always to Section 4.4 and except as otherwise as provided in or permitted by this Indenture), accept and retain any payment from the Lessee, enter into an agreement amending or supplementing any of the Transaction Documents, execute any waiver or modification of, or consent under the terms of any of the Transaction Documents, settle or compromise any claim (other than claims in respect of Excepted Property) against the Lessee arising under any of the Transaction Documents, or submit or consent to the submission of any dispute, difference or other matter arising under or in respect of any of the Transaction Documents (other than in respect of Excepted Property), to arbitration thereunder or enter into any business or activity other than the business of owning and leasing the Equipment.

It is understood and agreed by the parties hereto and by the holders from time to time of the Notes that this Indenture imposes no restriction on the Owner Participant's ability to transfer its Interest in the Trust Estate, but that any such transfer is governed by the provisions of Section 5.2 of the Interparty Agreement.

IT IS HEREBY COVENANTED AND AGREED by and between the parties hereto as follows:

## **ARTICLE I DEFINITIONS**

Section 1.1. Certain Definitions. Unless the context otherwise requires, all capitalized terms used herein and not otherwise defined shall have the meanings set forth in Annex 1 hereto for all purposes of this Indenture. All references to articles, sections, clauses, schedules and appendices in this Indenture are to articles, sections, clauses, schedules and appendices in and to this Indenture unless otherwise indicated.

## **ARTICLE II THE NOTES**

Section 2.1. Execution of Notes; Principal Amount. (a) The Notes shall be signed on behalf of the Borrower by any Person who, at the date of the actual execution of such Note, shall be a proper officer of the Borrower. Only such Notes as shall bear thereon a certificate of authentication executed by the Indenture Trustee substantially in the form set forth in Exhibit B hereto shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the

Indenture Trustee upon any Note executed by the Borrower shall be conclusive evidence that the Note so authenticated has been duly authenticated and delivered hereunder and that the holder is entitled to the benefits of this Indenture. The authentication by the Indenture Trustee of any Note issued hereunder shall not be construed as a representation or warranty by the Indenture Trustee as to the validity or security of this Indenture or of such Note, and the Indenture Trustee shall in no respect be liable or answerable for the use made of such Note or the proceeds thereof. The Indenture Trustee shall, upon presentation to it of Notes duly executed on behalf of the Borrower, authenticate such Notes upon the written request of the Borrower so to do and shall thereupon deliver such Notes to or upon the written order of the Borrower signed by any Person who, at the date of the actual execution of such order, shall be a proper officer of the Borrower.

(b) The principal amount of the Notes to be issued hereunder shall not exceed \$33,189,288.00.

Section 2.2. Terms of Notes. There shall be issued and delivered to each Loan Participant one or more Notes, in the maturity and bearing the interest rate as set forth in Exhibit B hereto, in a principal amount equal to the amount of the Notes purchased by such Loan Participant pursuant to Section 2.1(b) of the Interparty Agreement, which shall evidence the loan made by such Loan Participant, such Note to be substantially in the form set forth in Exhibit B with deletions and insertions as appropriate, duly authenticated by the Indenture Trustee and dated the Refunding Date.

The principal amount of and interest on each Note issued pursuant to the provisions of this Indenture shall be payable as set forth in the form thereof contained in Exhibit B and Annex A. Interest accrued on the Notes shall be computed on the basis of a 360-day year of twelve 30-day months on the principal amount thereof remaining unpaid from time to time from and including the date thereof to but excluding the date of payment. The Borrower shall furnish to the Indenture Trustee a copy of each Note issued pursuant to the provisions of this Indenture.

Section 2.3. Payment from Indenture Estate Only. Except as provided in Section 5.1 of the Interparty Agreement, all payments to be made under the Notes and this Indenture shall be made only from the income and the proceeds from the Indenture Estate and only to the extent that the Indenture Trustee shall have received sufficient income or proceeds from the Indenture Estate to make such payments in accordance with the terms of Article III hereof. Each holder of a Note, by its acceptance of such Note, agrees that it will look solely to the income and proceeds from the Indenture Estate to the extent available for distribution to such holder as herein provided and that none of the Borrower, the Indenture Trustee or their permitted successors and assigns is or shall be personally liable to the holder of any Note for any amount payable under such Note

or the Indenture or, except as expressly provided in the Interparty Agreement or the Indenture, for any liability under the Interparty Agreement or (in the case of the Borrower or the Indenture Trustee) this Indenture.

Section 2.4. Method of Payment. (a) The principal of and premium, if any, and interest on each Note will be payable in U.S. dollars in immediately available funds at the principal corporate trust administration office of the Indenture Trustee or as otherwise directed in the manner provided herein. Notwithstanding the foregoing or any provision in any Note or in any other Transaction Document to the contrary, the Indenture Trustee will pay, or cause to be paid, if so requested by any holder of a Note by written notice to the Borrower and the Indenture Trustee, all amounts payable by the Borrower hereunder to such holder or a nominee therefor either (i) by transferring by wire in immediately available funds to an account maintained by such holder with a bank in the United States the amount to be distributed to such holder or (ii) by mailing a check denominated in U.S. dollars in same day New York Clearing House funds to such holder at such address as such holder shall have specified in such notice, in any case without any presentment or surrender of any Note.

(b) Whenever the date scheduled for any payment to be made hereunder or under any Note shall not be a Business Day, then such payment need not be made on such scheduled date but shall be made on the earlier to occur of: (i) the next succeeding Business Day with the same force and effect as if made on such scheduled date and (provided such payment is made on such next succeeding Business Day) no interest shall accrue on the amount of such payment from and after such scheduled date to the time of such payment on such next succeeding Business Day, and (ii) the date the corresponding payment of Basic Rent is due under the Lease.

Section 2.5. Application of Payments to Principal Amount and Interest. In the case of each Note, each payment of principal thereof and premium, if any, and interest thereon shall be applied, first, to the payment of accrued but unpaid interest on such Note then due thereunder, second, to the payment of the unpaid principal amount of such Note then due thereunder, third, to the payment of any premium then due thereon and fourth, to the payment of the remaining outstanding principal amount of such Note; provided, that the Borrower may only prepay such Note in accordance with the provisions of Sections 2.10 and 3.2 hereof.

Section 2.6. Termination of Interest in Indenture Estate. A holder shall have no further interest in, or other right with respect to, the Indenture Estate when and if the principal amount of, premium, if any, and interest on all Notes held by such holder and all other sums payable to such holder hereunder and under such Notes and under the

Interparty Agreement shall have been paid in full or as otherwise provided in Section 9.1.

Section 2.7. Transfer of Notes. The Indenture Trustee shall maintain at its corporate trust office in Salt Lake City, Utah, or in the city in which the corporate trust office of a successor Indenture Trustee is located, a register for the purpose of registering transfers and exchanges of Notes (the "Register"). Subject to compliance with Section 4.3(c) of the Interparty Agreement, a holder of a Note intending to transfer such Note to a new payee, or to exchange any Note or Notes held by it for a Note or Notes of a different denomination or denominations, may surrender such Note or Notes to the Indenture Trustee at such corporate trust office of the Indenture Trustee, together with a written request from such holder for the issuance of a new Note or Notes, specifying the denomination or denominations (each of which shall be not less than \$1,000,000 in original face amount, or such lesser amount as shall constitute 100% of the Notes of such holder), and, in the case of a surrender for registration of transfer, the name and address of the transferee or transferees, provided that if the transferee requests that new Notes be issued in denominations of less than \$5,000,000 in original face amount, it shall have made arrangements with the Borrower for such transferee to pay the cost of wire transfers pursuant to Section 2.4 in excess of one wire transfer on each payment date. Promptly upon receipt of such documents, the Borrower will issue, and the Indenture Trustee will authenticate, a new Note or Notes, in the same aggregate principal amount and dated the same date or dates as, with the same payment schedule, in the form set forth in Exhibit B in the same maturity and bearing the same interest rate as the Note or Notes surrendered, in such denomination or denominations and payable to such payee or payees as shall be specified in the written request from such holder. All Notes issued upon any registration of transfer or exchange of Notes shall be the valid obligations of the Borrower evidencing the same respective obligations, and entitled to the same security and benefits under this Indenture, as the Notes surrendered upon such registration of transfer or exchange. The Indenture Trustee shall make a notation on each new Note or Notes of the amount of all payments or prepayments of principal and interest previously made on the old Note or Notes with respect to which such new Note or Notes is or are issued. From time to time, the Indenture Trustee will provide the Borrower with such information as it may request as to the registered holders of Notes.

Prior to the due presentment for registration of transfer of a Note, the Borrower and the Indenture Trustee shall deem and treat the registered holder of such Note as the absolute owner and holder of such Note for the purpose of receiving payment of all amounts payable with respect to such Note and for all other purposes and shall not be affected by any notice to the contrary.

The Indenture Trustee will promptly notify the Borrower and the Lessee of each request for a registration of transfer of a Note. The Indenture Trustee will promptly cancel and destroy all Notes surrendered for transfer or exchange pursuant to this Section.

Section 2.8. Mutilated, Destroyed, Lost or Stolen Notes. If any Note shall become mutilated, destroyed, lost or stolen, the Borrower shall, upon the written request of the holder of such Note, issue, and the Indenture Trustee shall authenticate and deliver in replacement thereof, a new Note in the form set forth in Exhibit B payable to the same holder in the same principal amount, of the same maturity, with the same payment schedule, bearing the same interest rate and dated the same date as the Note so mutilated, destroyed, lost or stolen. The Indenture Trustee shall make a notation on each new Note of the amount of all payments or prepayments of principal and interest theretofore made on the Note so mutilated, destroyed, lost or stolen and the date to which interest on such old Note has been paid. If the Note being replaced has become mutilated, such Note shall be surrendered to the Indenture Trustee and forwarded to the Borrower by the Indenture Trustee. If the Note being replaced has been destroyed, lost or stolen, the holder of such Note shall furnish to the Borrower and the Indenture Trustee such security or indemnity as may be required by them to save the Borrower and the Indenture Trustee harmless and evidence satisfactory to the Borrower and the Indenture Trustee of the destruction, loss or theft of such Note and of the ownership thereof. If an original Loan Participant or its nominee or any other institutional investor is the owner of any mutilated, destroyed, lost or stolen Note, then the affidavit of any of its authorized officers setting forth the fact of mutilation, destruction, loss or theft and such Loan Participant's (or other institutional investor's) ownership of the Note at the time of such mutilation, destruction, loss or theft shall be accepted as satisfactory evidence thereof and no indemnity shall be required as a condition to execution and delivery of a new Note other than the written agreement of such Loan Participant (or other institutional investor) to indemnify the Borrower and the Indenture Trustee from all risks resulting from the authentication and delivery of the substitute Note.

Section 2.9. Payment of Transfer Taxes. Upon the transfer of any Note or Notes pursuant to Section 2.7, the Borrower or the Indenture Trustee may require from the party requesting such new Note or Notes payment of a sum to reimburse the Borrower or the Indenture Trustee for, or to provide funds for the payment of, any tax or other governmental charge in connection therewith.

Section 2.10. Prepayments. (a) Neither any prepayment of any Notes nor any purchase by the Borrower of any Notes may be made except to the extent and in the manner expressly permitted by this Indenture. Every prepayment of Notes required to

be made pursuant to Section 3.2 shall be made in accordance with the provisions of this Section.

(b) In the event that the manufacturer becomes obligated pursuant to the Purchase Order to make any payment to the Lessee with respect to any Unit of Equipment in excess of 20% of the purchase price of such Unit, the Borrower shall prepay and apply, and there shall become due and payable, a principal amount of the Notes equal to the Loan Value of such Unit and all accrued and unpaid interest thereon, together with a premium equal to the Indenture Make-Whole Amount with respect to the Notes being prepaid determined as of two Business Days prior to the date of payment.

(c) In the event of a termination, expiration or non-renewal of the Lease for any reason with respect to any Unit of Equipment (including casualty, condemnation or other event of loss under the Lease), on the date of such termination, expiration or non-renewal, the Borrower shall prepay and apply, and there shall become due and payable, a principal amount of the Notes equal to the Loan Value of such Equipment and all accrued and unpaid interest thereon, together with a premium equal to the Indenture Make-Whole Amount with respect to such Notes being prepaid determined as of two Business Days prior to the date of such prepayment.

(d) In the event of (i) the exercise by the Lessee of its option to purchase the Equipment pursuant to Section 21 of the Lease, or (ii) any other termination, expiration or non-renewal of the Lease with respect to all of the Equipment, in each case on the date that any amounts are due to the Lessor thereunder, the Borrower shall prepay and apply, and there shall become due and payable, the entire principal amount of the Notes and all accrued and unpaid interest thereon, together with a premium equal to the Indenture Make-Whole Amount with respect to the Notes being prepaid determined as of two Business Days prior to the payment date.

(e) The Borrower shall have the privilege, on any Payment Date, of prepaying the outstanding principal amount of the Notes, in whole and not in part, by payment of the principal amount of the Notes and accrued interest thereon to the date of such prepayment, together with premium equal to the Indenture Make-Whole Amount, determined by the Borrower as of two Business Days prior to the date of such prepayment pursuant to this Section 2.10(e). Any notice of prepayment pursuant to this Section 2.10(e) shall be given by the Borrower not more than 60 nor less than 30 days prior to the Payment Date on which such prepayment shall be made.

(f) In the event of any partial prepayment of any Notes, the aggregate principal amount of such Notes to be prepaid shall be prorated by the Indenture Trustee among the holders thereof in proportion to the unpaid principal amount of such Notes

held by them, and the Indenture Trustee shall designate the portions of the Notes of each such holder to be prepaid. On or prior to the date fixed for any payment of Notes the moneys required for such payment shall be deposited with the Indenture Trustee by the Borrower. On the date of any partial prepayment of any Note, the Borrower shall deliver to the Indenture Trustee an amortization schedule with respect to such Note setting forth the amount of the payments to be made on such Note after the date of such partial prepayment and the unpaid principal balance of such Note after each such payment. The Indenture Trustee shall deliver a copy of the applicable schedule to the holder of such Note.

Section 2.11. Equally and Ratably Secured. All Notes at any time outstanding under this Indenture shall be equally and ratably secured hereby without preference, priority or distinction on account of the date or dates or the actual time or times of the issue or maturity of such Notes so that all Notes at any time issued and outstanding hereunder shall have the same rights, Liens and preferences under and by virtue of this Indenture.

Section 2.12. Taxes; Withholding. (a) Subject to the directions contained in clause (b) of this Section 2.12, the Indenture Trustee agrees, to the extent required by applicable law, to withhold from each payment due under or in respect of any Note, United States withholding taxes at the appropriate rate, and, on a timely basis, to deposit such amounts with an authorized depository and make such reports, filings and other reports in connection therewith, and in the manner, required under applicable law. Under any such withholding, the Indenture Trustee shall forthwith notify the affected holder of such Note, the Borrower and the Lessee of such withholding. The Indenture Trustee shall promptly furnish to each holder of a Note (but in no event later than the date thirty (30) calendar days after the due date thereof) a U.S. Treasury Form 1042S (or similar forms as at any relevant time in effect), if applicable, indicating payment in full of any taxes withheld from any payments by the Indenture Trustee to such Persons, together with all such other information and documents reasonably requested by the holders of the Notes and necessary or appropriate to enable each holder of a Note to substantiate a claim for credit or deduction with respect thereto for income tax purposes of the country where each holder of a Note is located.

(b) If any Person that is a "United States Person" and that is entitled to be paid any amount by the Indenture Trustee pursuant to this Indenture (i) is an exempt recipient, or (ii) is not an exempt recipient and has furnished a properly completed and currently effective U.S. Treasury Form W-9 (or such successor U.S. Treasury Form as may be required by the U.S. Treasury Department to avoid withholding of United States federal income tax), no amount shall be withheld by the Indenture Trustee in respect of United States federal income tax.

(c) If any Person that is a Non-U.S. Person and that is entitled to be paid any amount by the Indenture Trustee pursuant to this Indenture (i) has furnished to the Indenture Trustee a properly completed and correctly effective U.S. Treasury Form 4224, in duplicate, or Form W-8 (or such successor U.S. Treasury Form as may be required by the United States Treasury Department to avoid withholding of United States federal income tax) during the calendar year, in which and prior to the date on which, such amount is to be paid and (ii) has not notified the Indenture Trustee of the inaccuracy or expiration of such U.S. Treasury Form, no portion of that amount shall be withheld by the Indenture Trustee in respect of United States Federal income tax.

(d) If any Person that is a Non-U.S. Person and that is entitled to be paid any amount by the Indenture Trustee pursuant to this Indenture (i) has furnished to the Indenture Trustee a properly completed and currently effective U.S. Treasury Form 1001 (or such successor U.S. Treasury Form as may be required by the United States Treasury Department to reduce or eliminate the amount of United States federal income tax otherwise required to be withheld from such amount) and (ii) has not notified the Indenture Trustee of the inaccuracy or expiration of such U.S. Treasury Form, only the reduced portion, if any, of that amount required by applicable law or treaty shall be withheld by the Indenture Trustee in respect of United States federal income tax.

(e) Any taxes withheld hereunder shall for all purposes of this Agreement and the Notes be treated as actually paid to the intended recipient.

Section 2.13. Rule 144A Reporting Requirements. For so long as any of the Notes remain outstanding and are "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Act, the Borrower covenants and agrees that it shall, during any period in which it or the Lessee is not subject to Section 13 or 15(d) of the Exchange Act, make available to the Loan Participant or to any prospective purchaser of such Notes designated by the Loan Participant, upon the request of such Loan Participant or prospective purchaser, any information in its possession required to be provided by Rule 144A(d)(4) under the Securities Act in a format reasonably practicable to the Borrower. This covenant is intended to be for the benefit of the Loan Participant, and prospective purchasers designated by such Loan Participant, from time to time.

### **ARTICLE III RECEIPT, DISTRIBUTION AND APPLICATION OF INCOME FROM THE INDENTURE ESTATE**

Section 3.1. Basic Rent Distribution. Except as otherwise provided in Section 3.3, each installment of Basic Rent, as well as any Supplemental Rent in respect

of interest on overdue installments of Basic Rent, as the case may be, amounts paid by the Borrower pursuant to Section 5.1 of the Interparty Agreement, and any other moneys paid over by the Borrower or the Lessee, as the case may be, to the Indenture Trustee for such purpose, shall be distributed by the Indenture Trustee as promptly as possible but in no event later than two Business Days after receipt thereof in the following order of priority: first, so much of such installment as shall be required for the purpose shall be distributed and paid to the holders of the Notes to pay in full the aggregate amount of the payment or payments of principal and interest (as well as any interest on overdue principal or interest) then due, such distribution to be made ratably, without priority of one over the other, in the proportion that the amount of such payment or payments then due with respect to each such Note bears to the aggregate amount of payments then due under all such Notes; and second, the balance, if any, of such installment remaining thereafter shall be promptly distributed to the Borrower or as the Borrower may direct. The portion of each such installment distributed to a holder of a Note shall be applied by such holder in payment of such Note in accordance with the terms of Section 2.5.

Section 3.2. Payment in the Event of Prepayment. (a) Except as otherwise provided in Section 3.3, the amount, if any, received by the Indenture Trustee (i) from the Lessee pursuant to the Lease, (ii) from the Borrower pursuant to Section 5.1 of the Interparty Agreement, or (iii) from the Builder pursuant to the Purchase Agreement, in each case in accordance with Section 2.10, shall be paid and applied as follows:

(1) First, to the payment of an amount equal to the accrued and unpaid interest on that portion of the Notes to be prepaid pursuant to the following clause;

(2) Second, in the case of a prepayment described in Section 2.10(b) or 2.10(c), an amount equal to the Loan Value of such Equipment for which settlement is then being made shall be applied to the prepayment of the Notes, so that the remaining payments of principal on each Note shall be reduced in the proportion that the aggregate principal amount of the prepayment of such Note bears to the unpaid principal amount of the Notes immediately prior to the prepayment (after giving effect to all other prepayments to be made on such date on the Notes), and in the case of any other prepayment described in Section 2.10, an amount equal to the outstanding principal amount of the Notes shall be applied to the prepayment in full of the Notes;

(3) Third, to the payment of the Indenture Make-Whole Amount, if any, on all or that portion of the Notes to be prepaid pursuant to the preceding clause; and

(4) Fourth, the balance, if any, of such amounts remaining thereafter shall be distributed to the Borrower or as the Borrower may direct.

The "Loan Value" in respect of any Equipment shall be an amount equal to the product of (A) a fraction, the numerator of which is an amount equal to the Acquisition Cost of such Equipment for which settlement is then being made and the denominator of which is the aggregate Acquisition Cost of all Equipment then subject to the Lease (including the Acquisition Cost of such Equipment for which settlement is then being made), times (B) the unpaid principal amount of the Notes immediately prior to the prepayment provided for in this Section 3.2(a) (after giving effect to all other prepayments to be made on such date on the Notes).

(b) Except as otherwise provided in Section 3.3 or 3.5 hereof, any amounts received directly or through the Lessee from any governmental authority or other party pursuant to the Lease with respect to any Equipment as the result of an Event of Loss, and any amounts of insurance proceeds (other than insurance proceeds constituting Excepted Property) for damage to the Indenture Estate received directly or through the Lessee from any insurer pursuant to the Lease with respect thereto as the result of an Event of Loss, shall be applied as provided in clause (a) of this Section 3.2.

Section 3.3. Payments after Indenture Event of Default. (a) Except as provided in Section 3.5, all payments received and amounts realized by the Indenture Trustee after an Indenture Default or an Indenture Event of Default shall have occurred and be continuing, as well as all payments or amounts then held or thereafter received by the Indenture Trustee as part of the Indenture Estate while such Indenture Default or Indenture Event of Default shall be continuing, shall be held by the Indenture Trustee for application in the manner provided for in Sections 3.3(b), 3.5 and 4.7, as applicable, in respect of proceeds and avails of the Indenture Estate.

(b) Except as provided in Sections 3.3(a) and 3.5, if an Indenture Default or an Indenture Event of Default shall have occurred and be continuing, the Indenture Trustee shall not make any distribution to the Borrower but shall hold amounts otherwise distributable to the Borrower as collateral security for the obligations secured hereby and invested as provided in Section 5.4(b) until the earlier to occur of (i) the date on which no Indenture Default or Indenture Event of Default shall exist, and (ii) acceleration of the Notes occurs and such amounts are applied pursuant to Sections 3.3(a) and 4.7; provided that, if such Indenture Default or Indenture Event of Default arises solely as the result of a Lease Default or Lease Event of Default (including any Indenture Default or Indenture Event of Default described in Section 4.1(a) or (b)) and any amounts are held pursuant to this Section 3.3(b) for a period of 365 days during which time the Indenture Trustee shall not have accelerated payment of the Notes,

pursuant to Section 4, then all amounts then held by the Indenture Trustee under this Section 3.3(b) with respect to such Indenture Default or Indenture Event of Default, and all amounts otherwise distributable to the Borrower hereunder, shall be distributed to the Borrower or as the Borrower may direct.

Section 3.4. Other Payments. Except as otherwise provided in Section 3.3 or 3.5,

(a) any payments received by the Indenture Trustee for which no provision as to the application thereof is made in the Lease or the Interparty Agreement or elsewhere in this Article III, and

(b) all payments received and amounts realized by the Indenture Trustee under the Lease or any other Transaction Document or otherwise with respect to the Equipment (other than payments constituting Excepted Property) to the extent received or realized at any time after payment in full of the principal of and interest and premium, if any, on all Notes, as well as any other amounts remaining as part of the Indenture Estate after payment in full of the principal of and interest and premium, if any, on all Notes issued hereunder, shall be distributed forthwith by the Indenture Trustee in the order of priority set forth in Section 4.7 or as expressly required by any Transaction Document.

Section 3.5. Distribution of Excepted Property. Notwithstanding any other provision of this Indenture or any other Transaction Document, all amounts constituting Excepted Property received by the Indenture Trustee shall be promptly paid by the Indenture Trustee to the Person or Persons entitled thereto.

Section 3.6. Payments Under Sections 5.1 and 5.6 of the Interparty Agreement. Notwithstanding anything to the contrary contained herein, all payments made to the Indenture Trustee by PBCC pursuant to Section 5.1 or 5.6 of the Interparty Agreement shall be distributed to the holders of the Notes ratably, without priority of one over the other, in the proportion that the amount of such payment or payments then due with respect to each such Note bears to the aggregate amount of payments then due under all such Notes.

**ARTICLE IV**  
**REMEDIES OF THE INDENTURE TRUSTEE**  
**UPON AN INDENTURE EVENT OF DEFAULT**

Section 4.1. Indenture Events of Default. The following events shall constitute "Indenture Events of Default" and each such Indenture Event of Default shall be deemed to exist and continue so long as, but only so long as, it shall not have been remedied:

- (a) a Lease Event of Default; or
- (b) default by the Borrower in making any payment when due of principal of, premium, if any, or interest on, any Note or Notes arising as a result of a Lease Event of Default pursuant to Section 21(a) thereof, and such default shall continue unremedied for ten days after the same shall have become due and payable, or default by the Borrower in making any other payment when due and such default shall continue for 30 days after receipt by the Borrower of written notice of such default; or
- (c) any failure by the Borrower to observe or perform any covenant or obligation of it in this Indenture or in any other Transaction Document, if such failure is not remedied within a period of 30 days after written notice thereof is given by the Indenture Trustee to the Borrower; or
- (d) default by the Borrower in making any payment when due or any amounts required to be paid by the Borrower pursuant to Section 5.1 of the Interparty Agreement and such default shall continue unremedied for five Business Days after notice thereof is given by the Indenture Trustee; or
- (e) any failure by the Borrower to observe or perform any covenant or obligation of it in the Interparty Agreement or any other Transaction Document to which it is a party, if such failure is not remedied within a period of 30 days after written notice thereof is given by the Indenture Trustee to the Borrower specifying such failure (or longer grace period is so specified in the applicable covenant); or
- (f) any representation or warranty made by the Borrower under the Interparty Agreement, or by the Borrower hereunder, or by any representative of the Borrower in any document or certificate furnished to the Indenture Trustee or any Loan Participant in connection herewith or therewith or pursuant hereto or thereto, shall prove at any time to have been untrue or incorrect in any

material respect as of the date made and shall continue to be untrue or incorrect in any material respect; or

(g) the Borrower shall (i) commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect, or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or (ii) consent to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it, or (iii) admit in writing its inability to pay its debts generally as they come due, or (iv) make a general assignment for the benefit of creditors, or (v) take any corporate action to authorize any of the foregoing; or

(h) an involuntary case or other proceeding shall be commenced against the Borrower seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect, or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 90 consecutive days, or any seizure or attachment of a material portion of the assets of the Borrower which shall remain unvacated or unbonded for a period of 90 days; or

(i) the Borrower shall (x) fail to make any payment, equal to or exceeding \$10,000,000 of any Obligation or to make any payment, equal to or exceeding \$10,000,000, of any interest or premium thereon, when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) and such failure shall continue after the applicable notice or grace period, if any, specified in the agreement or instrument relating to such Obligation, or (y) fail to perform or observe any term, covenant or condition on its part to be performed or observed under any agreement or instrument relating to any Obligation when required to be performed or observed, and such failure shall continue after the applicable notice or grace period, if any, specified in such agreement or instrument, if the effect of such failure to perform or observe is to accelerate, or to permit the acceleration of, the maturity of the unpaid principal amount of which then equals or exceeds \$10,000,000; or

(j) any judgment or order for the payment of money in excess \$10,000,000 shall be rendered against the Borrower and either (x) enforcement proceedings shall have been commenced by any creditor upon such judgment or

order and not stayed, or (y) there shall be any period of 30 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect.

Section 4.2. Acceleration; Rescission and Annulment. If an Indenture Event of Default occurs and is continuing, the Indenture Trustee may, and upon the directions of a Majority in Interest shall, subject to Section 4.4, declare the unpaid principal amount of all Notes then outstanding and accrued interest thereon to be due and payable together with a premium, as liquidated damages for loss of a bargain, and not as a penalty, equal to the Indenture Make-Whole Amount, if any, with respect thereto (such Indenture Make-Whole Amount, if any, to be paid as and to the extent contemplated by Section 4.7), provided that (i) the Notes will automatically become due and payable without any action by the Indenture Trustee or the holders of the Notes in the case of an Indenture Event of Default under Section 4.1(g) or (h), or (ii) if any Indenture Event of Default described in paragraph (a), (b) or (d) of Section 4.1 has occurred and is continuing, any holder or holders of Notes at the time outstanding affected by such Indenture Event of Default may at any time, at its or their option, by notice or notices to the Indenture Trustee, declare all the Notes held by it or them to be immediately due and payable. At any time after the Indenture Trustee has declared the unpaid principal amount of all Notes then outstanding to be due and payable and prior to the sale of any of the Indenture Estate pursuant to this Article IV, the holders of at least 66-2/3% in aggregate unpaid principal amount of the Notes then outstanding, by written notice to the Borrower and the Indenture Trustee, may rescind and annul such declaration and thereby annul its consequences if: (i) there has been paid to or deposited with the Indenture Trustee an amount sufficient to pay all overdue installments of interest (including interest on overdue payments of principal and interest) on the Notes, and the principal of and premium, if any, on any Notes that have become due otherwise than by such declaration of acceleration, (ii) the rescission would not conflict with any judgment or decree, and (iii) all other Indenture Defaults and Indenture Events of Default, other than nonpayment of principal or interest on the Notes that have become due solely because of such acceleration, have been cured or waived.

Section 4.3. Remedies with Respect to Indenture Estate. (a) After an Indenture Event of Default and acceleration of the Notes shall have occurred and so long as such Indenture Event of Default shall be continuing, then and in every such case the Indenture Trustee, as assignee hereunder of the Lease or as secured party hereunder in respect of the Equipment or otherwise, may, and when required pursuant to the provisions of Article V hereof shall, subject to Section 4.4, exercise any or all of the rights and powers and pursue any and all of the remedies pursuant to Section 16 of the Lease and this Article IV and may recover judgment in its own name as the Indenture Trustee against the Indenture Estate and may take possession of all or any part of the

Indenture Estate, and may exclude the Borrower and all persons claiming under any of them wholly or partly therefrom.

(b) Subject to Section 4.4, the Indenture Trustee may, if at the time such action may be lawful and always subject to compliance with any mandatory legal requirements, either with or without taking possession, and either before or after taking possession, and without instituting any legal proceedings whatsoever, and having first given notice of such sale by registered mail to the Borrower and the Lessee once at least ten days prior to the date of such sale or the date on which the Indenture Trustee enters into a binding contract for a private sale, and any other notice which may be required by law, sell and dispose of the Indenture Estate, or any part thereof, or interest therein, at public auction to the highest bidder or at private sale in one lot as an entirety or in separate lots, and either for cash or on credit and on such terms as the Indenture Trustee may determine, and at any place (whether or not it be the location of the Indenture Estate or any part thereof) and time designated in the notice above referred to. Any such public sale or sales may be adjourned from time to time by announcement at the time and place appointed for such sale or sales, or for any such adjourned sale or sales, without further notice, and the Indenture Trustee or the holder or holders of any Notes, or any interest therein, may bid and become the purchaser at any such public sale. The Indenture Trustee may exercise such right without possession or production of the Notes or proof of ownership thereof, and as representative of the holders may exercise such right without including the holders as parties to any suit or proceeding relating to foreclosure of any property in the Indenture Estate. the Borrower hereby irrevocably constitutes the Indenture Trustee the true and lawful attorney-in-fact of the Borrower (in the name of the Borrower or otherwise) for the purpose, following the occurrence and during the continuance of an Indenture Event of Default, of effectuating any sale, assignment, transfer or delivery for enforcement of the Lien of this Indenture, whether pursuant to foreclosure or power of sale or otherwise, to execute and deliver all such bills of sale, assignments and other instruments as the Indenture Trustee may consider necessary or appropriate, with full power of substitution, the Borrower hereby ratifying and confirming all that such attorney or any substitute shall lawfully do by virtue hereof. Nevertheless, if so requested by the Indenture Trustee or any purchaser, the Borrower shall ratify and confirm any such sale, assignment, transfer or delivery, by executing and delivering to the Indenture Trustee or such purchaser all bills of sale, assignments, releases and other proper instruments to effect such ratification and confirmation as may be designated in any such request.

(c) Subject to Section 4.4, the Borrower agrees, to the fullest extent that it lawfully may, that, in case one or more of the Indenture Events of Default shall have occurred and be continuing, then, in every such case, the Indenture Trustee may take possession of all or any part of the Indenture Estate and may exclude the Borrower

and all Persons claiming under any of them wholly or partly therefrom. At the request of the Indenture Trustee, the Borrower shall promptly execute and deliver to the Indenture Trustee such instruments of title and other documents as the Indenture Trustee may deem necessary or advisable to enable the Indenture Trustee or an agent or representative designated by the Indenture Trustee, at such time or times and place or places as the Indenture Trustee may specify, to obtain possession of all or any part of the Indenture Estate. If the Borrower shall fail for any reason to execute and deliver such instruments and documents to the Indenture Trustee, the Indenture Trustee may pursue all or part of the Indenture Estate wherever it may be found and may enter any of the premises of the Lessee or the Borrower wherever the Indenture Estate may be or be supposed to be and search for the Indenture Estate and take possession of and remove the Indenture Estate. Upon every such taking of possession, the Indenture Trustee may, from time to time, at the expense of the Indenture Estate, make all such expenditures for maintenance, insurance, repairs, replacements, alterations, additions and improvements to any of the Indenture Estate, as it may deem proper. In each such case, the Indenture Trustee shall have the right to use, operate, store, control or manage the Indenture Estate, and to carry on the business and to exercise all rights and powers of the Borrower relating to the Indenture Estate, as the Indenture Trustee shall deem best, including the right to enter into any and all such agreements with respect to the maintenance, operation, leasing or storage of the Indenture Estate or any part thereof as the Indenture Trustee may determine; and the Indenture Trustee shall be entitled to collect and receive all tolls, rents, revenues, issues, income, products and profits of the Indenture Estate and every part thereof, without prejudice, however, to the right of the Indenture Trustee under any provision of this Indenture to collect and receive all cash held by, or required to be deposited with, the Indenture Trustee hereunder. Such tolls, rents, revenues, issues, income, products and profits shall be applied to pay the expenses of holding and operating the Indenture Estate and of conducting the business thereof, and of all maintenance, repairs, replacements, alterations, additions and improvements, and to make all payments which the Indenture Trustee may be required or may elect to make, if any, for taxes, assessments, insurance or other proper charges upon the Indenture Estate or any part thereof (including the employment of engineers and accountants to examine, inspect and make reports upon the properties and books and records of the Indenture Estate), and all other payments which the Indenture Trustee may be required or authorized to make under any provision of this Indenture, as well as just and reasonable compensation for the services of the Indenture Trustee, and of all persons properly engaged and employed by the Indenture Trustee, including the reasonable expenses of the Indenture Trustee.

(d) If an Indenture Event of Default occurs and is continuing and the Indenture Trustee shall have obtained possession of a Equipment, the Indenture Trustee shall not be obligated to use or operate such Equipment or cause such Equipment to be

used or operated directly or indirectly by itself or through agents or other representatives or to Lease, license or otherwise permit or provide for the use or operation of such Equipment by any other Person unless (i) the Indenture Trustee shall have been able to obtain insurance in kinds, at rates and in amounts satisfactory to it in its discretion to protect the Indenture Estate and the Indenture Trustee, as trustee and individually, against any and all liability for loss or damage to such Equipment and for public liability and property damage resulting from use or operation of such Equipment and (ii) funds are available in the Indenture Estate to pay for all such insurance or, in lieu of such insurance, the Indenture Trustee is furnished with indemnification from the holders of the Notes or any other Person upon terms and in amounts satisfactory to the Indenture Trustee in its discretion to protect the Indenture Estate and the Indenture Trustee, as trustee and individually, against any and all such liabilities.

(e) The Indenture Trustee may, subject to Section 4.4, exercise any or all rights, privileges and remedies of the Borrower under any Transaction Document (except with respect to Excepted Property), whether in the name of the Borrower, the Indenture Trustee or otherwise.

Section 4.4. Certain Rights of the Borrower. (a) Right to Cure. (i) In the event of the occurrence of a Lease Event of Default in respect of the payment of Basic Rent under the Lease (which, in consequence, gives rise to an Event of Default pursuant to Section 4.1(a) or (b) of this Indenture), then as long as no other Indenture Event of Default (other than arising from such Lease Event of Default) shall have occurred and be continuing, the Borrower may (but need not) pay to the Indenture Trustee, at any time prior to the expiration of a period of five Business Days (a "5-Day Period") after delivery of written notice of such default from the Indenture Trustee (it being understood and agreed by the Indenture Trustee that prior to the expiration of which 5-Day Period, the Indenture Trustee shall not accelerate payment of the Notes pursuant to this Article IV or declare the Lease in default pursuant to Section 22 thereof or exercise any of the rights, powers or remedies pursuant to such Section 22 or this Article IV), an amount equal to the full amount of such payment of Basic Rent, together with any interest at the Overdue Rate due thereon on account of the delayed payment thereof, and such payment by the Borrower shall be deemed to cure any Indenture Event of Default which arose from such failure of the Lessee (but such cure shall not relieve the Lessee of any of its obligations); provided, however, that the Borrower shall not be entitled to cure more than three consecutive or six total defaults in the payment of Basic Rent.

(ii) In the event of the occurrence of a Lease Event of Default resulting from the failure of the Lessee to perform or observe any other covenant, condition or agreement to be performed or observed under the Lease which is curable by the payment

of money, then, so long as no Indenture Event of Default not attributable to such Lease Event of Default shall have occurred and be continuing hereunder, the Borrower may, but shall not be obligated to, perform or observe any such covenant, condition or agreement on behalf of the Lessee prior to the expiration of a period of 10 Business Days (a "10-Day Period") after delivery of written notice of such default from the Indenture Trustee (it being understood and agreed by the Indenture Trustee that prior to the expiration of such 10-Day Period, the Indenture Trustee shall not accelerate payment of the Notes pursuant to this Section 4 or declare the Lease in default pursuant to Section 22 thereof or exercise any of the rights, powers or remedies pursuant to such Section 22 or this Article IV, in each case with respect to such default) and the Indenture Trustee agrees to accept such performance or observance by the Borrower as constituting performance or observance of the relevant covenant, condition or agreement by the Lessee and such payment or performance by the Borrower shall be deemed to cure any Lease Event of Default which arose or otherwise has arisen on account of such failure by the Lessee (but shall not relieve the Lessee of any of its obligations).

(iii) Upon any cure by the Borrower in accordance with Section 4.4(a)(i) or (ii), as the case may be, the Borrower shall, as the case may be, to the extent of their respective payments, be subrogated to the rights of the Indenture Trustee, as assignee hereunder of the Borrower to receive such payment of Basic Lease Hire or Supplemental Rent (and any interest due thereon on account of the delayed payment thereof) or right of reimbursement, and shall be entitled, so long as no other Indenture Event of Default not attributable to the Lease Event of Default in respect of which such cure thereof has been made by the Borrower shall have occurred and be continuing or would result therefrom, to receive such payment upon its receipt by the Indenture Trustee as aforesaid (but in each case only if all amounts of principal and interest at the time due and payable on the Notes shall have been paid in full); provided that the Borrower shall attempt to recover any such amount paid by it on behalf of the Lessee pursuant to this Section 4.4(a) except by demanding of the Lessee payment of such amount or by commencing an action against the Lessee to require the payment of such amount; and provided further that in no event shall the Borrower exercise any of the remedies under the Lease other than such demand or commencement of such action of specific performance. If the Indenture Trustee receives any payment to which the Borrower would be entitled pursuant to this Section 4.4(a)(iii), such payment shall be distributed in accordance with Section 3.3(b) or, if no Indenture Event of Default shall have occurred and be continuing, Section 3.1.

(b) Shared Rights. (i) Notwithstanding any provision of this Indenture or any other Transaction Document to the contrary, the Borrower shall at all times retain the right, to the exclusion of the Indenture Trustee, (A) to Excepted Property and with respect thereto to exercise any election or option or make any decision or determination

or give or receive any notice, consent, waiver or approval in respect of, or demand, collect, sue for or otherwise obtain all amounts due from the Lessee, as the case may be, on account of any Excepted Property but not the right to exercise any remedy under the Lease, and (B) to maintain separate insurance under Section 11 of the Lease;

(ii) so long as no Indenture Event of Default has occurred and is continuing, the Borrower shall at all times retain the right, not to the exclusion of the Indenture Trustee, the rights of the Owner under Sections 21 and 22 of the Lease;

(iii) the Borrower and the Indenture Trustee shall each retain the right to, (A) receive from the Lessee all notices, certificates, reports, filings, opinions of counsel, copies of all documents and all information which the Lessee is permitted or required to give or furnish to the "Lessor" or the "Owner" pursuant to the Lease or to the Borrower pursuant to any other Transaction Document, and (B) exercise rights with respect to insurance provided for in Section 11 of the Lease and the inspection rights provided for in Section 7 of the Lease;

(iv) so long as no Indenture Event of Default has occurred and is continuing, the Borrower and the Indenture Trustee shall each retain the right, acting jointly, to exercise the rights, elections and options of the Borrower as the Owner under the Lease to make any decision or determination, and to give any notice, consent, waiver or approval under the Lease and thereafter, all such rights may be exercised solely by the Indenture Trustee; and

(v) so long as no Indenture Event of Default which is not the result of a Lease Event of Default has occurred and is continuing, and the Indenture Trustee has advised the Borrower in writing that it has elected not to enforce compliance by the Lessee with a Lease Event of Default which has occurred and is continuing, the Borrower shall have the right to enforce performance by the Lessee of the covenant under the Lease in respect of which such Lease Event of Default shall have occurred and be continuing pursuant to, but only pursuant to, Section 22 of the Lease, and the Indenture Trustee shall have the exclusive right to exercise or enforce all of the other rights, powers and remedies of the Owner under the Lease in respect of such Lease Event of Default.

Section 4.5. Rights of the Lessee. Notwithstanding the provisions of this Indenture, including, without limitation, Section 4.3, so long as no Lease Event of Default shall have occurred and be continuing, neither the Indenture Trustee nor the Borrower shall take any action contrary to, or disturb, the Lessee's rights under the Lease, except in accordance with the provisions of the Lease, including, without

limitation, the Lessee's rights to possession and use of, and of quiet enjoyment of, the Equipment.

Section 4.6. Waiver of Existing Defaults. A Majority in Interest by notice to the Indenture Trustee on behalf of all holders of the Notes may waive any past Indenture Default or Indenture Event of Default hereunder and its consequences, except an Indenture Default or Indenture Event of Default: (i) in the payment of the principal of, premium, if any, or interest on any Note, or (ii) in respect of a covenant or provision hereof which under Article IX hereof cannot be modified or amended without the consent of the holder of each Note affected. Upon any such waiver, such default shall cease to exist, and any Indenture Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

Section 4.7. Application of Sale and Other Proceeds. The purchase money proceeds and/or avails of any sale of the Indenture Estate, or any part thereof, and the proceeds and avails of any remedy hereunder following acceleration of the Notes shall be paid and applied as follows:

First, so much of such payments or amounts as the Indenture Trustee for any fees which are due and payable for its services under this Indenture and any tax, expense (including reasonable attorneys fees) or other loss incurred by the Indenture Trustee (to the extent reimbursable and not previously reimbursed and to the extent incurred in connection with its duties as the Indenture Trustee) shall be distributed to the Indenture Trustee;

Second, so much of such payments or amounts as shall be required to reimburse the holders of the Notes for payments made by them to the Indenture Trustee pursuant to Section 4.3(d) and Section 5.2(f) (to the extent not previously reimbursed), and to pay such holders of the Notes the amounts payable to them pursuant to the provisions of the Interparty Agreement, shall be distributed to such holders of the Notes, without priority of one over the other, in accordance with the amount of the payment or payments made by, or payable to, each such holder;

Third, so much of such payments or amounts remaining as shall be required to pay the principal of and accrued interest on all Notes then due and payable, whether by declaration of acceleration pursuant to Section 4.2 or otherwise, and in case the aggregate amount so to be distributed shall be insufficient to pay in full the aforesaid amounts, then, ratably to the holders of the Notes, without priority of one over the other, in the proportion that the

aggregate unpaid principal amount of all Notes held by each such holder, plus the accrued but unpaid interest thereon to the date of distribution, bears to the aggregate unpaid principal amount of all Notes, plus the accrued but unpaid interest thereon to the date of distribution;

Fourth, so much of such payments or amounts as shall be required to pay all other sums due and owing to the Indenture Trustee or to the holders of the Notes hereunder (other than the Indenture Make-Whole Amount, if any, which shall be paid and applied in accordance with Clause Fifth of this Section 4.7) or under any of the Transaction Documents, and in case the aggregate amount so to be distributed shall be insufficient to pay in full the aforesaid amounts, then, to the Indenture Trustee and the holders of the Notes ratably without priority among one or the other;

Fifth, so much of such payments or amounts remaining as shall be required to pay the Indenture Make-Whole Amount, if any, to the holders of the Notes, and in case the aggregate amount so to be distributed shall be insufficient to pay in full the Indenture Make-Whole Amount, if any, then ratably to the holders of the Notes, without priority of one over the other, in the proportion that the aggregate unpaid principal amount of all Notes held by each such holder, bears to the aggregate unpaid principal amount of all Notes; and

Sixth, the balance, if any, of such payments or amounts remaining thereafter shall be distributed to the Borrower or as the Borrower may direct.

Section 4.8. Remedies Cumulative. Each and every right, power and remedy herein specifically given to the Indenture Trustee or otherwise in this Indenture shall be cumulative and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by the Indenture Trustee, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the time or thereafter any other right, power or remedy. No delay or omission by the Indenture Trustee in the exercise of any right, remedy or power or in the pursuance of any remedy shall impair any such right, power or remedy or be construed to be a waiver of any default on the part of the Borrower or the Lessee or to be an acquiescence therein.

Section 4.9. Discontinuance of Proceedings. In case the Indenture Trustee shall have proceeded to enforce any right, power or remedy under this Indenture

by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Indenture Trustee, then and in every such case the Borrower, the Indenture Trustee, the holders of the Notes and the Lessee shall be restored to their former positions and rights hereunder with respect to the Indenture Estate, and all rights, remedies and powers of the Indenture Trustee shall continue as if no such proceedings had been undertaken (but otherwise without prejudice).

Section 4.10. Noteholders' Rights. Notwithstanding any other provisions of this Indenture or any other Transaction Document, it is understood and agreed that the holders of the Notes shall have no greater rights than the Indenture Trustee (and such rights of the holders of the Notes shall be subject to the same limitations and restrictions as those of the Indenture Trustee) with respect to the Indenture Estate hereunder.

Section 4.11. Acceleration Clause. Subject to the other provisions of this Indenture, in case of any sale of the collateral or any part thereof pursuant to any judgment or decree of any court or otherwise in connection with the enforcement of any of the terms of this Indenture, the principal of the Notes, if not previously due, and the interest accrued thereon, shall at once become and be immediately due and payable; also, in the case of any such sale, the purchaser or purchasers, for the purpose of making settlement for or payment of the purchase price, shall be entitled to turn in and use the Notes and any claims for interest matured and unpaid thereon, in order that there may be credited as paid on the purchase price the sum apportionable and applicable to the Notes held by such purchaser, including principal and interest thereof, out of the net proceeds of such sale.

## **ARTICLE V**

### **DUTIES OF THE INDENTURE TRUSTEE**

The Indenture Trustee accepts the trusts hereunder and agrees to perform the same, but only upon the terms and conditions hereof, including the following, to all of which the Borrower and the respective holders of the Notes at any time outstanding by their acceptance thereof agree:

Section 5.1. Duties of the Indenture Trustee. (a) If any payments of the Basic Rent or payments of the principal or interest or premium, if any, on the Notes due and payable on any Rent Payment Date shall not have been paid in full on such Rent Payment Date, the Indenture Trustee shall give telephonic notice within one Business Day (followed by prompt written notice) to the Borrower, the Loan Participants and the Lessee specifying the amount and nature of such deficiency in payment. In the event the

Indenture Trustee shall have knowledge of an Indenture Event of Default or an Indenture Default, the Indenture Trustee shall give prompt notice of such Indenture Event of Default or Indenture Default to the Lessee, the Borrower and the Loan Participants by telegram, telex, or telephone (to be promptly confirmed in writing).

(b) The Indenture Trustee undertakes (i) except while an Indenture Event of Default actually known to the Indenture Trustee shall have occurred and be continuing, to perform such duties and only such duties as are specifically set forth in this Indenture and the other Transaction Documents, and (ii) while an Indenture Event of Default actually known to the Indenture Trustee shall have occurred and be continuing, to exercise such of the rights and powers as are vested in it by this Indenture and to use the same degree of care and skill in their exercise as an ordinary prudent person would exercise in the conduct of his or her own affairs.

(c) The Indenture Trustee upon receipt of instruments furnished to the Indenture Trustee pursuant to the provisions of this Indenture, shall examine the same to determine whether or not such instruments conform to the requirements of this Indenture, but need not make an independent verification of the facts or matters set forth therein.

Section 5.2. The Indenture Trustee's Liability. No provision of this Indenture shall be construed to relieve the Indenture Trustee from liability for its own negligent action, negligent failure to act, or its own willful misconduct, except that:

(a) the Indenture Trustee shall not be liable except for the performance of such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Indenture Trustee but the duties and obligations of the Indenture Trustee shall be determined solely by the express provisions of this Indenture; and

(b) in the absence of bad faith on the part of the Indenture Trustee, the Indenture Trustee may conclusively rely upon the authenticity of, and the truth of the statements and the correctness of the opinions expressed in, and shall be protected in acting upon, any resolution, Officer's Certificate, opinion of counsel, note, request, notice, consent, waiver, order, signature guaranty, notarial seal, stamp, acknowledgment, verification, appraisal, report, stock certificate, or other paper or document reasonably believed by the Indenture Trustee to be genuine and to have been signed, affixed or presented by the proper party or parties; and

(c) in the absence of bad faith on the part of the Indenture Trustee, whenever the Indenture Trustee shall consider it necessary or desirable that any

matter be proved or established prior to taking or suffering or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by an Officer's Certificate; provided, however, that the Indenture Trustee may require further and additional evidence and make such further investigation as it may consider reasonable; and

(d) the Indenture Trustee shall not be liable for any error of judgment made in good faith by an officer of the Indenture Trustee unless it shall be proved that the Indenture Trustee was negligent in ascertaining the pertinent facts; and

(e) the Indenture Trustee shall not be deemed to have knowledge of any Indenture Default or Indenture Event of Default unless and until an officer of the corporate trust department of the Indenture Trustee shall have actual knowledge thereof or the Indenture Trustee shall have received written advice thereof; and

(f) whether or not an Indenture Event of Default shall have occurred, the Indenture Trustee shall not be under any obligation to exercise any of the powers vested in it by this Indenture or take any action under this Indenture which may tend to involve it in any expense or liability, the payment of which within a reasonable time is not, in its reasonable opinion, assured to it by the security afforded to it by the terms of this Indenture, unless and until it is requested in writing so to do by one or more holders of Notes outstanding hereunder and furnished, from time to time as it may require, with reasonable security and indemnity; provided, however, that in the case of a Loan Participant or any other holder which is an institutional investor, the written indemnity of such Loan Participant or such holder shall be sufficient without requiring any additional security; and

(g) whether or not an Indenture Event of Default shall have occurred, whenever it is provided in this Indenture that the Indenture Trustee consent to any act or omission by any Person or that the Indenture Trustee exercise its discretion in any manner, the Indenture Trustee may (but need not) seek the written direction of a Majority in Interest (and shall be duly protected in relying thereon) and, unless written evidence of such direction has been received by the Indenture Trustee upon its request, it shall be fully justified in refusing so to consent or so to exercise its discretion; provided, however, that a Majority in Interest shall have the right to determine which of the remedies herein set forth shall be adopted and to direct the time, method and place of conducting all proceedings to be taken under the provisions of this Indenture for the enforcement thereof or of the Notes;

provided, however, that the Indenture Trustee shall have the right to decline to follow any such direction if the Indenture Trustee shall be advised by counsel that the action or proceedings so directed may not lawfully be taken or would be unjustly prejudicial to any holder of Notes not party to such direction or would be contrary to the terms of the Lease or any other Transaction Document; and

(h) the Indenture Trustee may consult with counsel and the written advice of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted to be taken by it hereunder in good faith reliance thereon and in strict conformity therewith; and

(i) the Indenture Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys, or by or through co-trustees or separate trustees, provided that the Indenture Trustee shall use due care in appointing the same, and the Indenture Trustee shall not be responsible for any co-trustee or separate trustee, so long as such parties shall have agreed for the benefit of the holders of the Notes to comply with the standard of care provided herein for the Indenture Trustee; the Indenture Trustee may in all cases pay reasonable compensation to all such attorneys, agents, co-trustees or separate trustees, as may be engaged in connection with the trusts hereof and will be reimbursed by the Lessee on demand for the costs thereof; and

(j) the Indenture Trustee shall not be liable for any action taken by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture and the instructions conforming to the requirements of this Indenture; and

(k) the Indenture Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of a Majority in Interest, relating to the time, method and place of conducting any proceeding for any remedy available to the Indenture Trustee, or exercising any trust or power conferred upon the Indenture Trustee, under this Indenture.

**Section 5.3. No Responsibility of the Indenture Trustee for Recitals, Etc.**

(a) The recitals and statements contained herein and in the Notes (except for the Indenture Trustee's certificate of authentication endorsed on the Notes) shall be taken as the recitals and statements of the Borrower, and the Indenture Trustee assumes no responsibility for the correctness of the same, nor shall the Indenture Trustee have any responsibility for or any liability with respect to any disclosure, warranty, representation

or concealment or failure to disclose in connection with the offering, solicitation, sale or distribution of the Notes by the Borrower or by any other Person.

(b) The Indenture Trustee makes no representation as to the validity or sufficiency of this Indenture, or of the Notes secured hereby, the security hereby or thereby afforded, the title of the Borrower to the Equipment or the descriptions thereof, or the value of any such collateral, or the filing or recording or registering of this Indenture or any other document.

(c) The Indenture Trustee shall not be concerned with or accountable to any Person for the use or application of any deposited moneys which shall be released or withdrawn in accordance with the provisions of this Indenture or of any property or securities or the proceeds thereof which shall be released from the lien hereof in accordance with the provisions of this Indenture.

Section 5.4. Status of Moneys Received. (a) All moneys received by the Indenture Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys or funds, except to the extent required by mandatory provisions of law, and may be deposited by the Indenture Trustee under such general conditions as may be prescribed by law and neither the Indenture Trustee nor any agent of the Indenture Trustee shall be under any liability for interest on any moneys received by it hereunder. The Indenture Trustee or any agent of the Indenture Trustee, in its individual or any other capacity, may become the owner of any Note and be interested in any financial transaction with the Borrower or any affiliated corporation, or the Indenture Trustee or such agent may act as depository or otherwise in respect to other Securities of the Borrower or any affiliated corporation, all with the same rights which it would have if it were not the Indenture Trustee or such agent.

(b) The Indenture Trustee shall invest and reinvest any funds from time to time held by the Indenture Trustee in such Permitted Investments as are directed in writing by the Borrower; provided that if an Indenture Event of Default shall have occurred and be continuing, such funds shall be invested in Indenture Investments. Upon any sale or payment of any investment, the proceeds thereof, plus any interest received by the Indenture Trustee thereon shall be held by the Indenture Trustee as part of the fund from which such investment was made for application as a part of such fund. The Indenture Trustee shall not be liable for any losses stemming from any investment made pursuant to this Section 5.4.

**ARTICLE VI**  
**CERTAIN LIMITATIONS ON BORROWER'S AND**  
**INDENTURE TRUSTEE'S RIGHTS**

Each of the Borrower and the Indenture Trustee agree that it shall have no right against the holders of the Notes or the Indenture Estate (except in the case of the Indenture Trustee as expressly provided in Section 4.7 hereof) for any fee as compensation for its services hereunder or any expenses or disbursements incurred in connection with the exercise and performance of its powers and duties hereunder or any indemnification against liability which it may incur in the exercise and performance of such powers and duties but, on the contrary, shall, in the case of the Indenture Trustee, look solely to the Lessee and in the case of the Borrower, shall look solely to the Lessee, for such payment and indemnification and that neither the Borrower nor the Indenture Trustee shall have any Lien on nor security interest in the Indenture Estate as security for such compensation, expenses, reasonable counsel fees, if any, disbursements and indemnification except, in the case of the Indenture Trustee, as provided in Section 4.7.

**ARTICLE VII**  
**RESIGNATION OR REMOVAL OF INDENTURE TRUSTEE;**  
**APPOINTMENT OF SUCCESSOR**

Section 7.1. Resignation or Removal of the Indenture Trustee. The Indenture Trustee or any successor thereto may resign at any time without cause by giving at least 30 days' prior written notice to the Borrower and the holders of the Notes. A Majority in Interest may at any time remove the Indenture Trustee without cause by an instrument in writing delivered to the Borrower and the Indenture Trustee. The resignation or removal of the Indenture Trustee and the appointment of a successor Indenture Trustee shall become effective only upon the successor Indenture Trustee's acceptance of appointment as provided in this Article VII.

Section 7.2. Appointment of Successor. In the case of the resignation or removal of the Indenture Trustee, a Majority in Interest may appoint a successor Indenture Trustee or if a successor Indenture Trustee shall not have been appointed and accepted its appointment hereunder within 60 days after the Indenture Trustee gives notice of resignation or is removed as provided above, the retiring Indenture Trustee, the Borrower or any holder of a Note may petition any court of competent jurisdiction for the appointment of a successor Indenture Trustee. Any successor Indenture Trustee so appointed shall immediately and without further act be superseded by any successor Indenture Trustee appointed by a Majority in Interest.

Section 7.3. Acceptance of Appointment. Any successor Indenture Trustee, however appointed, shall execute and deliver to the Borrower and to the predecessor Indenture Trustee an instrument accepting such appointment, and thereupon such successor Indenture Trustee, without further act, deed or conveyance, but subject to Section 7.4, shall become vested with all the estates, properties, rights, powers, duties and trusts of the predecessor Indenture Trustee hereunder in the trusts hereunder applicable to it with like effect as if originally named the Indenture Trustee herein; but nevertheless, upon the written request of such successor Indenture Trustee such predecessor Indenture Trustee shall execute and deliver an instrument transferring to such successor Indenture Trustee, upon the trusts herein expressed applicable to it, all the estates, properties, rights, powers and trusts of such predecessor Indenture Trustee, and such predecessor Indenture Trustee shall duly assign, transfer, deliver and pay over to such successor Indenture Trustee all moneys or other property then held by such predecessor Indenture Trustee hereunder.

Section 7.4. Qualification. The Indenture Trustee shall be a bank or trust company organized under the laws of the United States or any State thereof having a combined capital and surplus of at least \$250,000,000, if there be such an institution willing, able and legally qualified to perform the duties of the Indenture Trustee hereunder upon reasonable or customary terms. In case the Indenture Trustee shall cease to be eligible in accordance with the provisions of this Section 7.4, the Indenture Trustee shall resign immediately in the manner and with the effect specified in Section 7.1.

Section 7.5. Merger. Any corporation into which the Indenture Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Indenture Trustee shall be a party, or any corporation to which substantially all the corporate trust business of the Indenture Trustee may be transferred, shall, subject to the terms of Section 7.4, be the Indenture Trustee under this Indenture without further act.

## **ARTICLE VIII SUPPLEMENTS AND AMENDMENTS TO THIS INDENTURE AND OTHER DOCUMENTS**

Section 8.1. Supplemental Indentures with Consent of Majority In Interest. With the written consent of a Majority in Interest, the Borrower may, and the Indenture Trustee, subject to Section 8.2 hereof, shall, at any time and from time to time, enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights and obligations of holders of the

Notes and of the Borrower; provided, however, without the consent of each holder of a Note affected thereby, no such supplemental indenture shall:

(i) change the final maturity of the principal of any Note, or change the dates or amounts of payment of any installment of the principal of, premium, if any, or interest on any Note, or reduce the principal amount thereof or the premium, if any, or interest thereon, or change to a location outside the United States the place of payment where, or the coin or currency in which, any Note or the premium, if any, or interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment of principal or premium, if any, or interest on or after the date such principal or premium, if any, or interest becomes due and payable; or

(ii) create any Lien with respect to the Indenture Estate except such as are permitted by this Indenture, or deprive any holder of a Note of the benefit of the Lien on the Indenture Estate created by this Indenture; or

(iii) reduce the percentage in principal amount of the Notes, the consent of whose holders is required for any such supplemental indenture, or the consent of whose holders is required for any waiver (of compliance with certain provisions of this Indenture, or of certain defaults hereunder and their consequences) provided for in this Indenture; or

(iv) modify the rights, duties or immunities of the Indenture Trustee;  
or

(v) modify any provisions of this Section 8.1, except to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the holder of each Note affected thereby.

Section 8.2. The Indenture Trustee Protected. If in the opinion of the Indenture Trustee any document required to be executed pursuant to the terms of Section 8.1 adversely affects any right, duty, immunity or indemnity in favor of the Indenture Trustee under this Indenture, the Interparty Agreement, the Lease or any other Transaction Document, the Indenture Trustee may in its discretion decline to execute such document.

Section 8.3. Request of Substance, Not Form. It shall not be necessary for the consent of the holders of Notes under Section 8.1 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.

Section 8.4. Documents Mailed to Holders. Promptly after the execution by the Indenture Trustee of any document entered into pursuant to Section 8.1, the Indenture Trustee shall mail, by first-class mail, postage prepaid, a conformed copy thereof to each holder of a Note at its address set forth in the Register, but the failure of the Indenture Trustee to mail such conformed copies shall not impair or affect the validity of such document.

## **ARTICLE IX MISCELLANEOUS**

Section 9.1. Termination of Indenture. With respect to each Equipment, this Indenture and the trusts created hereby shall terminate in respect of such Equipment and this Indenture shall be of no further force or effect with respect thereto upon the earliest to occur of (i) the termination of the Lease with respect to such Equipment by the Lessee and upon payment in full to the Indenture Trustee of the amounts required to be paid pursuant to Section 2.10(c), in respect of such Equipment, and all other sums payable to the Indenture Trustee and the holders of the Notes under the Transaction Documents, (ii) the termination of the Lease and upon payment in full to the Indenture Trustee of the amounts required to be paid pursuant to Section 2.10(d) or 2.10(b), respectively, (iii) the prepayment in full of the entire principal amounts of, premium, and interest on all Notes outstanding hereunder and all other sums payable to the Indenture Trustee and the holders of the Notes under the Transaction Documents, (iv) the payment in full of the entire principal amount of, premium, if any and interest on all Notes outstanding hereunder and all other sums payable to the Indenture Trustee and the holders of the Notes hereunder and under such Notes and under the other Transaction Documents upon the maturity date of the Notes, and (v) the entire principal amount of premium, if any, and interest on all of the Notes outstanding hereunder, and all other sums payable to the Indenture Trustee and the holders of the Notes hereunder and under such Notes and under the other Transaction Documents shall have been defeased on customary terms and conditions reasonably satisfactory to the Indenture Trustee, including, without limitation a tax indemnification of the holders of the Notes.

Section 9.2. No Legal Title to Indenture Estate in Holders. No holder of a Note shall have legal title to any part of the Indenture Estate. No transfer, by operation of law or otherwise, of any Note or other right, title and interest of any holder of a Note in and to the Indenture Estate or hereunder shall operate to terminate this Indenture or the trusts hereunder or entitle any successor or transferee of such holder to an accounting or to the transfer to it of legal title to any part of the Indenture Estate.

Section 9.3. Sale of Equipment by the Indenture Trustee Is Binding.

Any sale or other conveyance of the Equipment by the Indenture Trustee made pursuant to the terms of this Indenture or the Lease shall bind the holders of the Notes and the Borrower and shall be effective to transfer or convey all right, title and interest of the Indenture Trustee, the Borrower and such holders of the Notes in and to the Equipment. No purchaser or other grantee shall be required to inquire as to the authorization, necessity, expediency or regularity of such sale or conveyance or as to the application of any sale or other proceeds with respect thereto by the Indenture Trustee.

Section 9.4. Notices. Unless otherwise expressly specified or permitted by the terms hereof, all communications and notices provided for herein shall be in writing or by facsimile, and any such notice shall become effective (a) upon personal delivery thereof, including, without limitation, by prepaid overnight mail or courier service, (b) in the case of notice by United States mail, certified or registered, postage prepaid, return receipt requested, upon receipt thereof, or (c) in the case of notice by facsimile, upon confirmation of receipt thereof, provided such transmission is promptly further confirmed by any of the methods set forth in clauses (a) or (b) above, in each case addressed to each party hereto at its address set forth below or, in the case of any such party hereto, at such other address as such party may from time to time designate by written notice to the other parties hereto:

If to the Lessee:

ILLINOIS CENTRAL RAILROAD COMPANY  
455 North Cityfront Plaza Drive  
Chicago, Illinois 60611

If to the Borrower:

PITNEY BOWES CREDIT CORPORATION  
201 Merritt Seven  
Norwalk, Connecticut 06856-5151  
Attn: Patricia Clifford

If to the Indenture Trustee:

FIRST SECURITY BANK, NATIONAL ASSOCIATION  
Corporate Trust Services  
79 South Main Street  
Salt Lake City, Utah 84111  
Attn: Brett R. King

If to the Loan Participant.

PRUDENTIAL SECURITIES INCORPORATED  
One New York Plaza, 15th Floor  
New York, NY 10292-2015  
Attn: Christopher L. Poli

Section 9.5. Notice of Default. In the event the Borrower shall have knowledge of an Indenture Default or an Indenture Event of Default, the Borrower shall give prompt written notice of such Indenture Default or Indenture Event of Default to the Lessee, the Indenture Trustee and the Loan Participants by telegram, telex, or telephone (to be promptly confirmed in writing).

Section 9.6. Severability. Any provision of this Indenture which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 9.7. Separate Counterparts. This Indenture may be executed in any number of counterparts each of such counterparts constituting an original, but all of such counterparts only one Indenture.

Section 9.8. Successors and Assigns. All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Borrower and its successors and permitted assigns, and the Indenture Trustee and its successors and permitted assigns, and each holder of a Note, all as herein provided. Any request, notice, direction, consent, waiver or other instrument or action by any holder of a Note shall bind the successors and assigns of such holder.

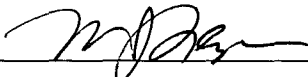
Section 9.9. Headings. The headings of the various Articles and Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

Section 9.10. Governing Law. **THIS INDENTURE SHALL BE IN ALL RESPECTS GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE.**

Section 9.11. All Payments from Indenture Estate. All payments under the Notes shall be made only from the Indenture Estate, as provided in Section 2.3, except as otherwise expressly provided in any Transaction Document (including Sections 5.1 and 5.6 of the Interparty Agreement). No director, officer, employee or stockholder, as such, of the Lessee, the Borrower or the Indenture Trustee shall have any liability for any obligations of the Lessee, the Borrower or the Indenture Trustee or under the Notes or the Indenture or for any claim based on, in respect of or by reason of such obligations or their creation, except as may be expressly provided in any Transaction Document. Each holder of the Notes by accepting a Note waives and release all such liability. The waiver and release are part of the consideration of the Notes.

IN WITNESS WHEREOF, the parties hereto have executed or caused this Memorandum of Assignment Agreement to be executed as of the date first above written.

PITNEY BOWES CREDIT CORPORATION  
as Assignor

By:   
Name: MICHAEL J. LEYH  
Title: Vice President  
Credit/Operations

FIRST SECURITY BANK,  
NATIONAL ASSOCIATION  
as Assignee

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have executed or caused this Memorandum of Assignment Agreement to be executed as of the date first above written

PITNEY BOWES CREDIT CORPORATION  
as Assignor

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

FIRST SECURITY BANK,  
NATIONAL ASSOCIATION  
as Assignee

By:  \_\_\_\_\_  
Name: **Brett R. King**  
Title: **Assistant Vice President**

CORPORATE FORM OF ACKNOWLEDGMENT

State of Connecticut   )  
  ) SS  
County of Fairfield     )

On this 20 day of January, 1997, before me personally appeared Michael J. Leyh, to me personally known, who being by me duly sworn, says that he is the Vice President, Credit/Operations of Pitney Bowes Credit Corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Maureen A. Bartolo  
Signature of Notary Public


MAUREEN A. BARTOLO  
NOTARY PUBLIC  
My commission expires MY COMMISSION EXPIRES FEB. 28, 2001



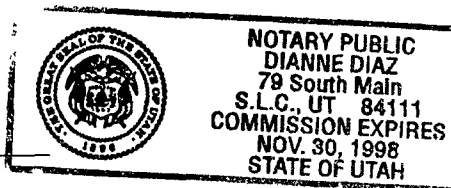
CORPORATE FORM OF ACKNOWLEDGMENT

State of Utah )  
 ) SS:  
County of Salt Lake

On this 21<sup>st</sup> day of January, 1997, before me personally appeared Brett R. King to me personally known, who being by me duly sworn, says that he is the Assistant Vice President of First Security Bank, National Association, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
\_\_\_\_\_  
Signature of Notary Public

My commission expires \_\_\_\_\_



Seal

## **SCHEDULE 1**

### **Equipment Description**

(600) Six Hundred 5,150 cubic foot covered hopper freight cars bearing running numbers IC799200 to IC799799.

**TRUST INDENTURE SUPPLEMENT**  
**NO. \_\_**

THIS INDENTURE SUPPLEMENT No. \_\_, dated \_\_, (this "Indenture Supplement"), of January \_\_, 1997, between PITNEY BOWES CREDIT CORPORATION, as the Borrower, and FIRST SECURITY BANK, NATIONAL ASSOCIATION, as the Indenture Trustee:

**W I T N E S S E T H :**

WHEREAS, Trust Indenture and Security Agreement dated as of January 21, 1997 (the "Indenture"), between the Borrower and First Security Bank, National Association, as the Indenture Trustee (the "Indenture Trustee"), provides for the execution and delivery of Indenture Supplements thereto substantially in the form hereof which shall particularly describe the Equipment and shall specifically mortgage the Equipment to the Indenture Trustee; and

WHEREAS, the Indenture relates to the Equipment described on Schedule 1 attached hereto and made a part hereof,

NOW, THEREFORE, in order to secure the prompt payment of the principal of, and premium, if any, and interest on all of the Notes from time to time outstanding under the Indenture and the performance and observance by the Borrower of all the agreements, covenants and provisions in the Indenture for the benefit of the holders of the Notes and in the Notes, subject to the terms and conditions of the Indenture, and in consideration of the premises and of the covenants contained in the Indenture and of the acceptance of the Notes by the holders thereof, and of the sum of \$1.00 paid to the Borrower by the Indenture Trustee at or before the delivery hereof, the receipt whereof is hereby acknowledged, the Borrower (i) has sold, assigned, transferred, pledged and confirmed, and does hereby sell, assign, transfer, pledge and confirm, a security interest in and mortgage lien on all right, title and interest of the Borrower in and to the property comprising the Equipment described on Schedule 1 attached hereto, (ii) has sold, assigned, transferred and set over, a security interest in and a mortgage lien on all of the right, title and interest of the Borrower under, in and to the Lease Supplement of even date herewith (excluding, however, any rights to Excepted Property thereunder), to the Indenture Trustee, its successors and assigns, in the trust created by the Indenture for the benefit of the holders from time to time of the Notes.

**EXHIBIT A**  
**(to Trust Indenture and Security Agreement)**

To have and to hold all and singular the aforesaid property unto the Indenture Trustee, its successors and assigns, in trust for the benefit and security of the holders from time to time of the Notes and for the uses and purposes and subject to the terms and provisions set forth in the Indenture.

This Supplement shall be construed as supplemental to the indenture and shall form a part of it, and the Indenture is hereby incorporated by reference herein and is hereby ratified, approved and confirmed.

This Supplement may be executed by the Borrower in separate counterparts, each of which when so executed and delivered is an original, but all such counterparts shall together constitute but one and the same Supplement.

AND FURTHER, the Borrower hereby acknowledges that the Equipment referred to in Schedule 1 hereto and has been delivered to the Borrower and is subject to the pledge or mortgage thereof under the Indenture.

IN WITNESS WHEREOF, the Borrower has caused this Indenture Supplement to be duly executed by one of its duly authorized officers, as of the day and year first above written.

PITNEY BOWES CREDIT CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

THE NOTE (DEFINED BELOW) HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") OR ANY STATE SECURITIES LAWS. THE TRANSFER OF THE INTEREST REPRESENTED BY THE NOTE IS SUBJECT TO CERTAIN RESTRICTIONS AND CONDITIONS SET FORTH IN THE NOTE AGREEMENT PURSUANT TO WHICH THIS NOTE IS ISSUED (COPIES OF WHICH ARE AVAILABLE FROM PRUDENTIAL SECURITIES INCORPORATED).

THE HOLDER OF THIS NOTE BY ITS ACCEPTANCE HEREOF AGREES NOT TO OFFER, SELL OR OTHERWISE TRANSFER SUCH NOTE EXCEPT TO A PERSON IT REASONABLY BELIEVES (BASED UPON SUCH PERSON'S DELIVERY TO THE INDENTURE TRUSTEE OF AN INVESTOR LETTER IN THE FORM ATTACHED TO THE INDENTURE) IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A.

7.42% SECURED NOTE  
Due December 30, 2011

No R-1

PPN No. 724477 F@ 8

\$33,189,288.00

January 21, 1997

PITNEY BOWES CREDIT CORPORATION (the "Borrower") hereby promises to pay to Prudential Securities Incorporated, or registered assigns, the principal sum of \$33,189,288.00, in lawful currency of the United States of America, in installments payable on the dates set forth in Annex A hereto, commencing June 30, 1997 and thereafter to and including December 30, 2011, each such installment to be in the amount equal to the product of the original principal amount of this Note multiplied by the percentage set forth under the column headed "Principal %" of Annex A hereto for each such date, together with interest thereon on the amount of such principal amount remaining unpaid from time to time from and including the date hereof until such principal amount shall be due and payable on December 30, 2011 thereafter to the maturity date hereof at the rate of 7.42% per annum (computed on the basis of a 360-day year of twelve 30-day months). Interest on any overdue principal and (to the extent legally enforceable) on overdue interest shall be paid from the due date thereof at a rate equal to the Overdue Rate.

EXHIBIT B  
(to Trust Indenture and Security Agreement)

This Note is one of the Borrower's 7.42% Secured Notes, due December 30, 2011 (the "Notes") which are equally and ratably secured by the Trust Indenture and Security Agreement dated as of January 21, 1997 (the "Indenture"; capitalized terms not otherwise defined herein having the meanings set forth therein) between the Borrower and First Security Bank, National Association (the "Indenture Trustee"). Reference is hereby made to the Indenture for a description of the property subject thereto, the nature and extent of the security for the Notes, the rights of the holders of the Notes, the Indenture Trustee and the Borrower in respect of such security and otherwise and certain rights of the Borrower, including the right to purchase the Notes, and the terms upon which the Notes are to be authenticated and delivered. As provided in the Indenture, the aggregate principal amount of the Notes which may be issued thereunder shall not exceed \$33,189,288.00.

Payments with respect to the principal amount hereof, premium, if any, and interest thereon shall be payable in U.S. dollars in immediately available funds at the principal corporate trust office of the Indenture Trustee, or as otherwise provided in the Indenture. Each such payment shall be made on the date such payment is due and without any presentment or surrender of this Note. Whenever the date scheduled for any payment to be made hereunder or under the Indenture shall not be a Business Day, then such payment need not be made on such scheduled date but may be made on the next succeeding Business Day with the same force and effect as if made on such scheduled date and (provided such payment is made on such next succeeding Business Day) no interest shall accrue on the amount of such payment from and after such scheduled date to the time of such payment on such next succeeding Business Day.

Each holder hereof, by its acceptance of this Note, agrees that each payment received by it hereunder shall be applied, first, to the payment of accrued but unpaid interest on this Note then due, second, to the payment of the unpaid principal amount of this Note then due, third, to the payment of any premium then due, and fourth, to the payment of the remaining outstanding principal amount of this Note; provided, that the Borrower may only prepay this Note as provided in Sections 2.10 and 3.2 of the Indenture.

This Note is not subject to redemption or prepayment except as provided in Sections 2.10 and 3.2 of the Indenture. The holder hereof, by its acceptance of this Note, agrees to be bound by said provisions.

This Note is a registered Note and is transferable, as provided in the Indenture, only upon surrender of this Note for registration of transfer duly endorsed by, or accompanied by a written statement of transfer duly executed by, the registered holder hereof or his attorney duly authorized in writing. Prior to the due presentation for

registration of transfer of this Note, the Borrower and the Indenture Trustee shall deem and treat the registered holder of this Note as the absolute owner and holder hereof for the purpose of receiving payment of all amounts payable with respect hereto and for all other purposes and shall not be affected by any notice to the contrary.

All payments of principal and interest and premium, if any, to be made hereunder and under the Indenture shall be made only from the income and proceeds from the Indenture Estate and only to the extent that the Indenture Trustee shall have sufficient income or proceeds from the Indenture Estate to make such payments in accordance with the terms of Article III of the Indenture, except as expressly provided in any Transaction Document (including Sections 5.1 and 5.6 of the Interparty Agreement). Each holder hereof, by its acceptance of this Note, agrees that it will look solely to the income and proceeds from the Indenture Estate to the extent available for distribution to the holder hereof as provided in the Indenture and that none of the Borrower, the Owner Participant, the Indenture Trustee or their permitted successors and assigns is or shall be personally liable to the holder hereof for any amount payable under this Note or the Indenture or, except as expressly provided in the Interparty Agreement or the Indenture, for any liability under the Interparty Agreement or (in the case of the Borrower or the Indenture Trustee) the Indenture.

Unless the certificate of authentication hereon has been executed by or on behalf of the Indenture Trustee by manual signature, this Note shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Borrower has caused this Note to be executed by one of its authorized officers as of the date hereof.

PITNEY BOWES CREDIT CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

**[FORM OF INDENTURE TRUSTEE'S CERTIFICATE  
OF AUTHENTICATION]**

This is one of the Secured Notes referred to in the within-mentioned Indenture.

FIRST SECURITY BANK, NATIONAL  
ASSOCIATION, as the Indenture Trustee

By \_\_\_\_\_  
Authorized Officer

## **ANNEX 1 - DEFINITIONS**

**AMORTIZATION SCHEDULE**  
**\_\_\_% SECURED NOTE**

**[Based as a Percentage of Principal Amount]**

**[Insert as Rider 1C Ctrl Amortization Schedule]**

**ANNEX A**  
**(to Trust Indenture and Security Agreement)**